BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TIMOTHY LEE DORLAND	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,025,898
SUN PUBLICATIONS	)	
Respondent	)	
AND	)	
	)	
ONE BEACON INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance company One Beacon Insurance Company (hereinafter One Beacon) appeal the February 14, 2006 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was awarded medical treatment with either Dr. Pratt or Dr. Galate.

ISSUES

Respondent and its insurance carrier One Beacon argue that the Administrative Law Judge (ALJ) ordered medical treatment but failed to address the defenses raised by respondent. In particular, respondent alleges claimant failed to prove he suffered accidental injury arising out of and in the course of his employment, failed to provide timely notice, and failed to submit timely written claim. Additionally, respondent, in its brief, argues the date of accident should be limited to a single traumatic event on July 19, 2004.[1] Claimant alleges not only a traumatic event on that date, but also a series of accidents through his last day worked with respondent, April 21, 2005.

The brief filed by respondent and its insurance carrier One Beacon on March 10, 2006, with the Workers Compensation Board clarified the dispute regarding which insurance company had coverage during the alleged dates of accident. One Beacon

[1] At the preliminary hearing, claimant stated that the date of accident was July 21, 2004. (*See* P.H. Trans. at 19.)

Insurance Company, formerly known as Atlantic Specialty Insurance Company, had coverage from January 1, 2004, through and including May 1, 2005. This coverage period encompasses both the alleged single traumatic date of accident and the alleged series of accidents culminating on claimant's last day worked.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Preliminary Decision of the ALJ should be affirmed.

Claimant, a printing press operator for respondent since September 22, 1998, worked 60 hours per week on the average, handling weights up to 75 pounds daily. Medical records in evidence indicate claimant has had neck, mid back and low back problems for up to five years prior to July of 2004. Claimant filed a workers compensation accident report for a specific traumatic event on July 19, 2004, when, as he was pulling a gear apart, he experienced back pain. Claimant testified that no medical treatment was offered. Claimant sought medical treatment with his family doctor, Greg L. Curry, M.D., who diagnosed chronic lumbar strain.[2] Claimant was referred for physical therapy with Laurie Bettlach, PA-C, and remained off work for several weeks. He was returned to regular duty on September 24, 2005. However, claimant testified his problems had not ended. Claimant stated he continued with neck and back pain, and his pain symptoms became worse.

Claimant returned to his regular job until April 21, 2005, at which time he decided he had reached his limit. Claimant advised his supervisor he was in pain and needed medical attention. He talked to Lori Steele, the director of operations, and was placed on FMLA leave. Claimant said that type of leave was not his idea; it was suggested by Lori.[3]

Claimant received treatment from several health care professionals, including Yama Zafer, D.C., who recommended that claimant remain off work for several weeks. Claimant has not returned to work for respondent.

Respondent argues claimant collected both FMLA benefits and disability benefits from MetLife (Metropolitan Life Insurance Company). Respondent argues for claimant to now claim workers compensation benefits is inappropriate. However, claimant contends the type of leave and benefit paid was done at the respondent representative's suggestion.

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[2] P.H. Trans., Insurer's Ex. Z.

[3] P.H. Trans. at 37.

It was not claimant's idea. On the respondent's MetLife disability form,[4] the second page contains the question whether this condition is work related. That question is marked "no". But, claimant denies marking that answer. Additionally, the question directly above asks if the disability is due to illness or injury/accident. Claimant testified he marked the form as an injury/accident, but was advised by Dr. Zafar's office to mark illness. The form shows the injury/accident answer was marked and then the mark was partially covered by what appears to be white out.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.[5]

> It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[6]

The Board will first determine whether claimant suffered accidental injury arising out of and in the course of his employment.

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[7]

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[4] P.H. Trans., Resp. Ex. D (Disability Claim For Accident & Sickness (A&S) / Short Term Disability (STD) / Salary Continuance).

[5] K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

[6] K.S.A. 44-501(g).

[7] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

Claimant's description of the accidents and his job description are essentially uncontradicted. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.[8]

Claimant has alleged both a traumatic event on July 19, 2004, and a series through his last day worked of April 21, 2005. Claimant described a physical job, requiring repeat lifting and bending. This job caused claimant repeated difficulties for which he received medical care on several occasions from several different health care providers. The Board finds claimant has proven by a preponderance of the evidence that he suffered a specific traumatic event in July 2004, followed by a series of accidents through his last day worked.[9]

K.S.A. 44-520 requires notice be provided to the employer within 10 days of an accident. Here, claimant testified to talking to his supervisors on many occasions regarding his ongoing problems and his progressing medical care. The Board finds claimant satisfied the requirements of the notice statute.

> No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation. . . .[10]

Respondent stipulated at the preliminary hearing that written claim was received on October 21, 2005. This is within 200 days of claimant's last day worked of April 21, 2005. Therefore, claimant has satisfied the requirements of the statute regarding written claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated February 14, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

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[8] *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

[9] *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

[10] K.S.A. 44-520a(a).

Dated this ____ day of April, 2006.

BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant
Michelle Daum Haskins, Attorney for Respondent and its insurance carrier One Beacon Insurance Company
Alleen Castellani VanBebber, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director